IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 308 OF 2000

1. Dr. (Miss) Shashikala R. Potnis
2. Mr. Surendra R. Potnis ..Appellants

versus

1. Shri Sharad Vinayak Ghanekar
2. Shri Ritesh Sharad Ghanekar ..Respondents

Mr. A. G. JOshi for the Appellants.

Mr. S. M. Kazi for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 17TH FEBRUARY,2005

ORAL ORDER :

1. Heard Counsel for the Appellants and the Respondents.

2. Dr. Miss. Shashikala Vinayak Ghanekar died on 22.1.1995. She left a Will dated 15.8.1994. Both the Appellants were named as executors of the Will. They filed an application for probate. Citations were issued. Saraswatibai V. Ghanekar filed her objection through her Advocate. Incidentally it has to be said that deceased testator Shashikala Ghanekar had left behind two

sisters, brother and mother Savitribai. Therefore mother Smt. Savitribai appeared before the court and lodged her objection. Saraswatibai however died on 23.5.1998 and these two respondents filed their separate objections before the probate court on 25.8.1998 and 26.8.1998. Out of them Respondent No.1 Sharad died and only objector Respondent No.2 Ritesh is there on record. The appellants raised objection before the Probate Court to the effect that respondents have no right to file caveat as they have no interest in the property because they were claiming through the Will of Saraswatibai. This objection was rejected by the court and therefore this Appeal.

3. My attention was drawn by counsel for the appellants to Section 283 of the Indian Succession Act, which requires "..District Judge to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings....." Counsel for the appellants contended that respondents have no interest in the estate of the deceased and therefore the order of the court is wrong.

4. Admittedly, Saraswatibai - mother of the testator Shashikala Ghanekar had taken objection to the Will. If she had succeeded the Will would have

been null and void and then the property of Shashikala Ghanekar would have devolved upon her legal heirs under the provisions of Hindu Succession Act and Saraswatibai as a mother would be entitled to a share in the property. If after raising objection Saraswatibai dies then the original respondent No.1 Sharad the brother of Testator Shashikala Ghanekar would have been entitled to the estate. Therefore, these two respondents originally had a direct interest in the property as contemplated by Section 283 Sub Section (c) of the Indian Succession Act.

5. Counsel for the appellants strenuously urged that the respondents had not claimed any independent interest in the property of the testator but they were claiming through the Will of Saraswatibai or under the Will of Saraswatibai, that might be a mistake in forming or putting up their case but once it is held that they are the persons having interest in the property of the testator, in the aforesaid circumstances, then the court was justified in rejecting the objection. There is no merit in the Appeal and it has to be dismissed.

6. In the result, I pass the following order :

ORDER

. Appeal is dismissed.

. Counsel for the Appellants prayed for staying operation of this order. Prayer is rejected.

17.02.2005 (D. G. DESHPANDE, J.)